

MICHAEL B. STONE, ESQ., Bar #160177
2250 East Imperial Highway, Suite 200
El Segundo, California 90245
(310) 776-7500
(310) 356-3295 Fax
michael.b.stone@att.net

Attorney for Defendant
CHARLES SERRANO

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 ATLANTIC RECORDING) Case No.: 07CV1824 J (JMA)
12 CORPORATION, a Delaware)
13 corporation; SONY BMG MUSIC) (Honorable Napoleon A. Jones)
14 ENTERTAINMENT, a Delaware)
15 general partnership; WARNER) COUNTERCLAIM
16 BROS. RECORDS, INC., a)
17 Delaware corporation; ARISTA) DEMAND FOR JURY TRIAL
18 RECORDS, LLC, a Delaware)
19 limited liability company;)
20 BMG MUSIC, a New York general)
21 partnership; MAVERICK)
22 RECORDING COMPANY, a)
23 California joint venture; UMG)
RECORDINGS, INC., a Delaware)
corporation; and CAPITOL)
RECORDS, INC., a Delaware)
corporation,)
Plaintiffs,)
vs.)
CHARLES SERRANO,)
Defendant.)

Defendant, CHARLES SERRANO, alleges:

26 1. Charles Serrano ("Serrano") is an individual residing
27 within this District.

28 / / /

1 2. On information and belief, Atlantic Recording
2 Corporation is a corporation duly organized and existing under
3 the laws of the State of Delaware, with its principal place of
4 business in the State of New York.

5 3. On information and belief, Sony BMG Music
6 Entertainment is a Delaware general partnership, with its
7 principal place of business in the State of New York.

8 4. On information and belief, Warner Bros. Records Inc.
9 is a corporation duly organized and existing under the laws of
10 the State of Delaware, with its principal place of business in
11 the State of California.

12 5. On information and belief, Arista Records LLC is a
13 limited liability company duly organized and existing under the
14 laws of the State of Delaware, with its principal place of
15 business in the State of New York.

16 6. On information and belief, BMG Music is a general
17 partnership duly organized and existing under the laws of the
18 State of New York, with its principal place of business in the
19 State of New York.

20 7. On information and belief, Maverick Reording Company
21 is a joint venture between SR/MDM Venture Inc. And Maverick
22 Records LLC, organized and existing under the laws of the State
23 of California, with its principal place of business in the State
24 of California.

25 8. On information and belief, UMG Recordings, Inc. is a
26 corporation duly organized and existing under the laws of the
27 State of Delaware with its principal place of business in the
28 State of California.

1 9. On information and belief, Capitol Records, Inc. is a
2 corporation duly organized and existing under the laws of the
3 State of Delaware, with its principal place of business in the
4 State of New York.

5 10. On information and belief, Arista Records LLC is a
6 limited liability company duly organized and existing under the
7 laws of the State of Delaware, with its principal place of
8 business in the State of New York.

9 11. This action arises under the Copyright Laws of the
10 United States for a declaratory judgment of non-infringement
11 pursuant to the Declaratory Judgement Act, Title 28, *United*
12 *States Code*, Sections 2201 and 2202, to the extent that an
13 actual controversy exists between Defendant and Plaintiffs.

14 12. Jurisdiction in this Court is proper under Title 28,
15 *United States Code*, Section 1338 by virtue of this action being
16 a question of Federal Law arising under the Copyright Laws of
17 the United States, to wit, Title 17, *United States Code*, Section
18 505.

19 13. Venue is proper in this District under Title 28,
20 *United States Code*, Section 1391(b)(2), as a substantial part of
21 the events or omissions giving rise to the claims occurred in
22 this District.

23 14. At all times relevant to this action, Serrano was and
24 is an account holder with SBC Internet Services for Digital
25 Subscriber Line (DSL) internet service.

26 15. Defendant Charles Serrano denies that he at any time
27 downloaded, "made available," or uploaded any of Plaintiffs'
28 allegedly copyrighted works.

1 16. Defendant denies that he ever knowingly permitted any
2 other person to use his computer or internet connection to
3 download, upload, or share copyrighted music or other
4 copyrighted materials to or from other computers.

5 17. Plaintiffs have brought the claims and allegations set
6 forth in the Complaint in order to harass and cause unnecessary
7 costs to Defendant and to extract from Defendant a settlement of
8 a claim for which they know they have no, or insufficient,
9 evidentiary support, and for which Plaintiffs will have no
10 evidentiary support even after a reasonable opportunity for
11 further investigation and discovery, and for which there is no
12 sufficient legal basis.

13 18. Plaintiffs have brought the claims and allegations set
14 forth in the Complaint without adequately investigating the
15 facts to determine whether they are true and sufficient to
16 support Plaintiffs' claims.

17 19. On information and belief, Plaintiffs' only evidence
18 to support their claims against Defendant is his status as an
19 account holder with SBC Internet Services.

20 20. Plaintiffs' allegations are neither well grounded in
21 fact nor are they warranted by existing law or a good-faith
22 argument for the extension, modification, or reversal of
23 existing law. *Federal Rules of Civil Procedure*, Rule 11.

24 21. Defendant seeks relief pursuant to Title 28, *United*
25 *States Code*, Section 1927 from Plaintiffs, their agents and
26 their counsel, because they have multiplied the proceedings
27 unreasonably and vexatiously. Defendant Serrano is entitled to
28 recover costs, expenses, and attorneys' fees reasonably incurred

1 because of such conduct.

2 22. Plaintiffs claim to be the copyright owners or
3 licensees of certain sound recordings.

4 23. Plaintiffs commenced civil actions in the
5 U.S. District Court for the Southern District of California
6 against Defendant, charging Defendant with copyright
7 infringement.

8 24. Defendant is accused therein of downloading and
9 file-sharing certain computer files consisting of sound
10 recordings allegedly owned or licensed by Plaintiffs.

11 25. The acts allegedly committed by Defendant as set forth
12 in the Complaint(s) therein do not constitute copyright
13 infringement.

14 26. Plaintiffs do not allege any specific acts of
15 downloading or file-sharing or provide any details of time and
16 place regarding such acts.

17 27. Defendant did not in any event violate any of the
18 exclusive rights of any of the Plaintiffs in and to the sound
19 recordings.

20 28. There is an actual controversy between the Defendant
21 and the Plaintiffs.

22 29. Plaintiffs have on many occasions voluntarily
23 dismissed actions similar to the action against Defendant which
24 they have brought in district courts throughout the United
25 States. Plaintiffs are believed to often dismiss their
26 boilerplate complaints as soon as they learn that the action
27 will not result in a quick default or settlement, but that the
28 defendants are able to obtain counsel.

1 30. By voluntarily dismissing many cases, Plaintiffs
2 have prevented the legitimacy of their conduct and strategy in
3 those cases from being judicially examined, and have prevented
4 the defendants in those cases from being judicially vindicated.

5 31. The relief requested cannot be obtained in the action
6 against Defendant.

7 32. Defendant is entitled to a positive judicial
8 declaration of non-infringement and to such further relief as
9 may be appropriate, including costs and reasonable attorney's
10 fees.

11 33. Defendant seeks attorney fees and costs available
12 under The Copyright Act, Title 17, *United States Code*, Section
13 505:

14 **§ 505. Costs and attorney's fees**

15 In any civil action under this title, the court in its
16 discretion may allow the recovery of full costs by or
17 against any party other than the United States or an
officer thereof. Except as otherwise provided by this
title, the court may also award a reasonable attorney's fee
to the prevailing party as part of the costs.

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19 **COUNT I**

20 **DECLARATORY JUDGMENT OF NON-INFRINGEMENT**

21 34. Defendant repleads, re-alleges, and incorporates by
22 reference each and every allegation contained in the foregoing
23 Paragraphs 1 through 33, inclusive, of this pleading as if fully
24 set forth at length hereat.

25 35. Because Defendant did nothing improper regarding
26 Plaintiffs' copyrighted materials, he is entitled to a
27 declaratory judgment of non-infringement.

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1 36. Upon information and belief, the plaintiffs' only
2 evidence to support its claim against defendant was (a) his
3 status as an account holder with an internet service provider,
4 and (b) a printout of a text list of titles of songs which
5 allegedly was procured through a dynamic IP address which
6 plaintiffs' investigators claim to have been accessed by the
7 internet access account paid for by defendant.

8 37. Defendant has never engaged in the alleged peer to
9 peer file sharing alleged by plaintiffs.

10 38. Plaintiffs have a pattern and practice of commencing
11 actions of this type. See, e.g. *Atlantic Records v. Andersen*,
12 05-cv-933 Dist. of Oregon, *Atlantic v. Zuleta*, 06-cv-1221 ND GA,
13 *Capitol Records v. Debbie Foster*, 04-1569-W, USDC, WD OK;
14 *Elektra v. Wilke*, 06-cv-2717 N.D. IL, *Priority Records LLC v.*
15 *Candy Chan*, 04-cv-73645 E.D. Michigan, *Virgin Records v.*
16 *Marson*, 05-cv-03201 C.D.CA, *Warner v. Scantlebury*, 05-cv-74394
17 E.D. Michigan.

18 39. Plaintiffs' practice of commencing lawsuits against
19 internet subscribers for the purpose of coercing settlements,
20 mostly from innocent working families who lack the means to
21 defend the lawsuits, is a despicable, extortionate and
22 oppressive practice.

23 40. Pursuant to Title 17, United States Code, Section
24 505, defendant is entitled to be awarded his attorney fees in
25 defending this frivolous suit.

26 41. Defendant is entitled to a declaratory judgment
27 declaring that he committed no copyright infringement.

28 / / /

COUNT II

TRESPASS

42. Defendant repleads, re-alleges and incorporates by reference the allegations set forth in the foregoing Paragraphs 1 through 41 of this pleading as if fully set forth at length hereat.

43. At all times relevant to this action, on information and belief, Media Sentry, Inc., a Georgia corporation, is an agent of Plaintiffs, regularly contracted by Plaintiffs to perform investigations aimed at identifying future litigation targets for Plaintiffs, and to collect what it considers to be forensic evidence of copyright infringement. All tortious actions conducted by Media Sentry or its employees or agents (hereinafter referred to individually and collectively as "Media Sentry") against Defendant are imputed to Plaintiffs.

44. Defendant has never authorized Media Sentry, or any other organization, group, company, or individuals to electronically enter, nor to conduct any electronic or physical search of Defendant's computer without Defendant's knowledge, permission and consent, such search or searches being an unlawful intrusion and trespass upon Defendant's private property.

45. At all times relevant hereto, Defendant reasonably expected that, and had a right to be assured that, the contents of his computer, and information relating to Defendant's account with his internet service provider, were private matters which would not be viewed by others or disclosed without his knowledge or consent to any other person, including Media Sentry.

1 Plaintiffs' and Media Sentry's actions in accessing Defendant's
2 computer files, and information relating to Defendant's account
3 with his internet service provider, was wrongful and invaded
4 Defendant's privacy.

5 46. Media Sentry's acts as hereinabove described were
6 committed within the scope of its agency, and were authorized or
7 ratified by Plaintiffs.

8 47. As a consequence of the actions of Plaintiffs as
9 hereinabove described, Defendant's privacy has been violated and
10 Defendant has suffer and continues to suffer embarrassment,
11 anxiety, mental distress, emotional pain and suffering,
12 inconvenience, and financial distress, all to Defendant's
13 general damage in an amount or amounts to be proved at the time
14 of trial.

15 48. Plaintiffs are liable to Defendant for damages
16 resulting from their wrongful actions, and from the wrongful
17 actions of Plaintiffs' agents as hereinabove alleged.

18 49. Plaintiffs' actions as hereinabove alleged were
19 intended to damage Defendant; were despicable and oppressive;
20 and were committed with willful and conscious disregard for
21 Defendant's rights and Plaintiff's responsibilities.

22 50. By Plaintiffs' actions as hereinabove alleged,
23 Plaintiffs committed trespass upon Defendant's property.

24 **COUNT III**

25 **VIOLATION OF COMPUTER FRAUD AND ABUSE ACT**

26 51. Defendant repleads, re-alleges and incorporates by
27 reference the allegations set forth in the preceding Paragraphs
28 1 through 50 of this pleading as if fully set forth at length

1 hereat.

2 52. Under the Computer Fraud and Abuse Act, Title 18,
3 *United States Code*, Section 1030, it is illegal to break into
4 another person's private computer to spy, steal or remove
5 private information, damage property, or cause other harm or
6 losses. The CFAA prohibits a person from accessing a computer
7 without authorization to "obtain information from any protected
8 computer if the conduct involved an interstate or foreign
9 communication." Section 1030(a)(2)(C). The CFAA further
10 prohibits a person from breaking into a computer without
11 permission and creates a cause of action where the unauthorized
12 access results in damage, loss, or personal injury. Section
13 1030(a)(5)(B)(iii).

14 53. Defendant's computer, its capacity and its integrity
15 are his personal property. The Plaintiffs employed MediaSentry
16 as their agent to bypass Defendant's computer security systems
17 and break into his personal computer to secretly spy and steal
18 or remove private information. MediaSentry did not have his
19 permission to inspect, copy, or remove Defendant's private
20 computer files. It gained access secretly and illegally.

21 54. Plaintiffs, and their agents, willfully used
22 Defendant's computer without authorization to appropriate
23 Defendant's personal property for their own purposes.

24 55. Plaintiffs' conduct resulted in damages and harm to
25 Defendant's health and property. As a direct result of
26 Plaintiffs' interference with the integrity and capacity of
27 Defendant's personal computer, Defendant invested substantial
28 resources into investigating the integrity of Defendant's

1 computer. Plaintiffs' conduct resulted in direct and
2 consequential damages, loss, and harm to Defendant in an amount
3 to be proven at trial in excess of \$5,000.

4 **COUNT IV**

5 **INVASION OF PRIVACY**

6 56. Defendant repleads, re-alleges and incorporates by
7 reference the allegations set forth in the preceding Paragraphs
8 1 through 55 of this pleading as if fully set forth at length
9 hereat.

10 57. Plaintiffs, and their attorneys, obtained Defendant's
11 private information relating to Defendant's account with his
12 internet service provider through the use of unlawful and
13 improper *ex parte* communications with this Court and by
14 misleading this Court.

15 58. By the actions set forth above, Plaintiffs invaded
16 Defendant's privacy.

17 **COUNT V**

18 **INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS**

19 59. Defendant repleads, re-alleges and incorporates by
20 reference the allegations set forth in the preceding Paragraphs
21 1 through 58 of this pleading as if fully set forth at length
22 hereat.

23 60. By the actions set forth above, Plaintiffs
24 intentionally inflicted emotional distress upon Defendant.

25 **WHEREFORE DEFENDANT DEMANDS JUDGMENT AS FOLLOWS:**

26 1. For an award of Defendant's attorney fees, costs, and
27 disbursements, according to proof;
28 2. For a declaratory judgment of noninfringement as to each

1 claimed work;
2 3. For actual and compensatory damages;
3 4. For punitive damages; and
4 5. For all proper relief.

5 Dated: October 19, 2007

LAW OFFICES OF MICHAEL B. STONE

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/s Michael B. Stone
MICHAEL B. STONE, ESQ.
Attorney at Law
Attorney for Defendant
CHARLES SERRANO

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PROOF OF SERVICE BY CM/ECF SYSTEM

I am over 18 years old, not a party to this action, and reside in the County of Los Angeles, State of California. My business address is: 2250 East Imperial Highway, Suite 200, El Segundo, California 90245.

On October 19, 2007, I served the

COUNTERCLAIM

on the interested parties: I transmitted a true copy of the document to opposing counsel of record by electronically filing the document with the Court's CM/ECF system.

Jonathan G. Fetterly, Esq.
Holme Roberts & Owen LLP
777 South Figueroa Street, Suite 2800
Los Angeles, California 90017-3826

(Attorney for Plaintiffs)

I declare under the laws of the United States of America that I am a member of the Bar of this Court and the foregoing is true and correct. Executed in Long Beach, California this 19th day of October, 2007.

/s Michael B. Stone
MICHAEL B. STONE